

DOCUMENT 00 52 00

CONTRACT AGREEMENT

PROJECT TITLE

THIS AGREEMENT was executed this _____ day of _____, 20____ by and between **[Name of Contractor]** whose place of business is located at **[Address of Contractor]** (“Contractor”), and the CITY OF SAN BRUNO (“City”), acting under and by virtue of the authority vested in the City by the laws of the State of California.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and City agree as follows:

Article 1. Work

- 1.1 Contractor shall complete all Work specified in the Contract Documents, in accordance with the Plans, Specifications, and all other terms and conditions of the Contract Documents.

Article 2. Architect/Engineer and Project Manager

- 2.1 The City Engineer and its authorized vendor designed the Project and furnished the Plans and Specifications. The City Engineer shall have the rights assigned to Architect/Engineer in the Contract Documents.
- 2.2 City has designated the City Engineer as its Project Manager to act as City’s point of contact relating to the Contract Documents and to determine whether the work performed is in accordance with the Contract Documents.
- 2.3 The City may assign all or part of the Project Manager’s rights, responsibilities and duties to a Project or Construction Manager.

Article 3. Contract Time and Liquidated Damages

3.1 Contract Time

Contractor shall commence work on the date established in the Notice to Proceed. City reserves the right to modify or alter the commencement date of the Work. Contractor shall achieve Substantial Completion of the entire Work within _____ **Working Days** from the date when the contract time commences to run as provided in Document 00 72 00 (General Conditions). Contractor shall achieve Final Completion of the entire Work and be ready for Final Payment in accordance with Section 01 77 00 (Closeout Procedures) 20 Working Days from the date when Substantial Completion was established.

3.2 Liquidated Damages

City and Contractor recognize that time is of the essence of this Agreement and that City will suffer financial loss in the form of Contract administration expenses (such as project management and consultant expenses), if all or any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Contractor and City agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by City because of a delay in completion of all or any part of the Work. Accordingly, City and Contractor agree that as liquidated damages for delay Contractor shall pay City:

3.2.1 _____ dollars (\$_____) for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.

3.2.2 _____ dollars (\$_____) for each Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

These measures of liquidated damages shall apply cumulatively and except as provided below, shall be presumed to be the damages suffered by City resulting from delay in completion of the Work.

3.3 Liquidated damages for delay shall only cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by City as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from defective work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from City (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

3.4 It is further agreed that prior to issuance of a Notice of Completion under the terms of this Contract, and as a condition precedent to the City's obligation for the issuance of the Notice of Completion and Final Payment, the Contractor shall submit to the City a "Maintenance and Warranty Bond" to be valued at ten percent (10%) of the final contract amount. Such Bond shall be in force and valid for a period of one (1) year unless extended.

Article 4. Contract Sum

4.1 City shall pay Contractor the Contract Sum of _____

Dollars (\$_____) for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.

Article 5. Contractor's Representations

In order to induce City to enter into this Agreement, Contractor makes the following representations and warranties:

- 5.1 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- 5.2 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, which have been made available for Bidders or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents and Document 00 72 00 of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.
- 5.3 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Section 5.2 of this Agreement) that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00 72 00; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.
- 5.4 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

Article 6. Contract Documents

- 6.1 Contract Documents consist of the Project Manual and include the following documents, and all changes, Addenda, and Modifications thereto:

Document 00 10 00	Notice Inviting Bids
Document 00 21 00	Instructions to Bidders
Document 00 24 13	Scopes of Bids

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Document 00 41 00	Bid Proposal
Document 00 41 70	Addenda Acknowledgement
Document 00 51 00	Notice of Award
Document 00 52 00	Contract Agreement
Document 00 61 13.13	Construction Performance Bond
Document 00 61 13.16	Construction Labor and Material Payment Bond
Document 00 72 00	General Conditions
Document 00 73 00	Special Conditions

General Requirements
Technical Specifications
Drawings Sheet 1 thru _____

6.2 The Contract Documents may only be amended, modified or supplemented as provided in Document 00 72 00.

Article 7. Miscellaneous

7.1 Terms and abbreviations used in this Agreement are defined in Document 00 72 00 and Section 01 42 16 (Definitions) and will have the meaning indicated therein.

7.2 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of City or acting as an employee, agent, or representative of City, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the City is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

7.3 Contractor shall not assign any portion of the Contract Documents without the City's prior approval. Any assignment of any portion of the Contract Documents without the City's prior written approval shall be deemed null and void. Contractor may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code Section 4100, *et seq.*

7.4 The Contract Sum includes all allowances (if any).

7.5 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time City tenders final payment to Contractor, without further acknowledgment by the parties.

7.6 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by

Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at City's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code Section 1861, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

- 7.7 Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 7.8 This Agreement and the Contract Documents shall be deemed to have been entered into in the City of San Bruno, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in San Mateo County Superior Court. Contractor accepts the terms of Document 00 72 00, Article 12, as a claims procedure by agreement under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.

PROJECT TITLE
Project No.

IN WITNESS WHEREOF the parties have executed this Agreement in duplicate the day and year first above written.

CONTRACTOR: [CONTRACTOR'S NAME]

By: _____

By: _____

Its: _____

Its: _____

Title (If corporation: Chairman,
President, or Vice President)

Title (If corporation: Secretary, Chief
Financial Officer or Assistant Treasurer)

Contractor's San Bruno Business
License number

CITY OF SAN BRUNO

By: _____
City Manager

Date: _____

(Council Action dated _____)

Attest: _____
City Clerk

APPROVED AS TO FORM

By: _____
City Attorney

Attachments:

-END OF DOCUMENT-